

APPEAL NO. 030838
FILED MAY 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 12, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the claimant timely notified his employer of the injury; that the claimant had disability from July 23 to September 23, 2002; and that the appellant (carrier) waived the right to contest compensability by not timely contesting the injury. The carrier appealed and the claimant responded, urging affirmance.

DECISION

Affirmed.

The resolution of the carrier waiver issue is determinative of most of the other issues presented here. The carrier does not dispute that it received written notice of the claimant's _____, injury on June 20, 2002, and filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) contesting compensability with the Texas Workers' Compensation Commission on July 3, 2002. In challenging the hearing officer's determination that it waived the right to contest compensability in accordance with Sections 409.021 and 409.022, the carrier relies upon our decision in Texas Workers' Compensation Commission Appeal No. 023010-s, decided January 9, 2003. In Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003, we had occasion to revisit our decision in Appeal No. 023010-s. In so doing, we focused on language in the Texas Supreme Court's decision in Continental Cas. Co. v. Downs, 81 S.W.3d 803 (Tex. 2002), and determined that the carrier is required to take some action within seven days of receiving written notice of the injury in order to be entitled to the 60-day period to investigate a claim and deny compensability. It cannot simply sit back and rely on the fact that benefits did not accrue prior to the date it filed its dispute to argue that it did not waive its right to contest compensability. In Appeal No. 030380-s, we specifically stated that we "hereafter decline to follow Appeal No. 023010-s." As such, we cannot agree that the hearing officer erred in not applying that decision herein. In this instance, there is no evidence in the record that the carrier "took some action" within the seven-day period indicating that it had accepted the claim or intended to pay benefits; thus, the hearing officer did not err in determining that the carrier waived its right to dispute compensability of the claimed injury.

Due to our affirmance of the hearing officer's waiver determination, we likewise affirm her determination that the claimant sustained a compensable injury because the injury became compensable as a matter of law due to the carrier's waiver of its right to dispute compensability. In addition, by waiving its right to contest compensability, the carrier also lost its right to assert a defense that the claimant failed to timely notify his

employer of the injury under Sections 409.001 and 409.002. Texas Workers' Compensation Commission Appeal No. 022027-s, decided September 30, 2002.

Finally, nothing in our review of the record indicates that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAVIER GONZALEZ
3421 WEST WILLIAM CANNON DRIVE
SUITE 131, PMB #113
AUSTIN, TEXAS 78745.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge